

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

NO. 4:15-CV-61-FL

ELDER DEFORRORRORA LOCUST,)

Plaintiff,)

v.)

ORDER

ABC BOARD; BILL JOHNSON, *in*)

His Official Capacity as Director of)

Public City of Kinston Public Safety;)

CITY OF KINSTON PUBLIC)

SAFETY ,)

Defendant.)

This matter is before the court on motions to dismiss for failure to state a claim upon which relief can be granted, made pursuant to Federal Rule of Civil Procedure 12(b)(6), filed by each defendant. (DE 16, 33, 34). Defendants have submitted their memoranda in support and plaintiff's response time has passed. In this posture, the issues raised are ripe for ruling. For the reasons that follow, the motions are granted.

COURT'S DISCUSSION

Plaintiff, proceeding *pro se*, initiated this action by complaint entered on the docket April 15, 2015. (DE 1). Thereafter, plaintiff filed a corrected complaint, (DE 9), which subsequently was supplemented with additional factual allegations. (DE 11). As derived from the corrected complaint, plaintiff alleges a host of civil rights violations stemming from the occupation of certain property by a non-party named Christopher Landers. Plaintiff suggests Landers wrongfully is occupying certain property owned by plaintiff and using that property to illegally sell alcohol,

among other things. Plaintiff further suggests that he complained to defendants on numerous occasions and that such complaints fell on deaf ears.

A claim is stated under Rule 12(b)(6) if the pleading contains “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In evaluating whether a claim is stated, “[the] court accepts all well-pled facts as true and construes these facts in the light most favorable” to the non-moving party but does not consider “legal conclusions, elements of a cause of action, . . . bare assertions devoid of further factual enhancement[,] . . . unwarranted inferences, unreasonable conclusions, or arguments.” Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 255 (4th Cir. 2009) (citations omitted).

Plaintiff’s complaint contains insufficient factual matter to support plaintiff’s various claims. Although the complaint contains a wealth of facts, the specific portions of the complaint bearing on the named defendants’ liability are nothing more than conclusory allegations which are not entitled to the presumption of truth. Accordingly, plaintiff’s complaint must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.¹

¹ On August 6, 2015, plaintiff filed an appeal with the United States Court of Appeals for the Fourth Circuit. “Generally, the filing of a notice of appeal immediately transfers jurisdiction of all matters relating to the appeal from the district court to the court of appeals.” Lytle v. Griffith, 240 F.3d 404, 407 n.2 (4th Cir. 2001). However, the general rule does not apply where the district court addresses a motion “in aid of the appeal.” See Fobian v. Storage Tech. Corp., 164 F.3d 887, 891 (4th Cir. 1999). Where this is the only ruling of substance in this case, the court determines that this order will “aid the appeal.” Accordingly, jurisdiction exists.

CONCLUSION

Based on the foregoing, defendant's motions to dismiss the case for failure to state a claim upon which relief can be granted, (DE 16, 33, 34), are GRANTED. The case is DISMISSED. The clerk is DIRECTED to close this case.

SO ORDERED, this the 12th day of August, 2015.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style. The first name "Louise" is written with a large, ornate capital "L". The middle initial "W." is written in a smaller, simpler script. The last name "Flanagan" is written with a capital "F" and a trailing flourish.

LOUISE W. FLANAGAN
United States District Judge